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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA COURIER

May 19, 1999

Magalie Roman Salas, Esq., Secretary  
Federal Communications Commission  
445 Twelfth Street, SW Room TWA-325  
Washington, DC 20554

**RE:** *In Re Federal-State Joint Board on Universal Service* (CC Docket No. 96-45)

Dear Ms. Salas:

Personal  
Communications  
Industry  
Association

On May 20, 1999, Mary Madigan Jones, Vice President, and Angela Giancarlo, Director of Federal Regulatory Affairs for the Personal Communications Industry Association ("PCIA") together with Michele Farquhar of Hogan & Hartson met with Ari Fitzgerald, advisor to Chairman Kennard.

I enclose for the record a copy of a written *ex parte* presentation issued to Mr. Fitzgerald. The presentation discusses issues related to the above-referenced proceeding. In addition, I provided a copy of the presentation to Peter Tenhula, advisor to Commissioner Michael Powell.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter and presentation for the referenced docket are hereby filed with the Secretary's office. In addition, I am sending copies of this notice to each of the persons listed below. Please refer questions in connection with this matter to me at 703-535-7487.

Respectfully submitted,



Angela E. Giancarlo, Esq.  
Director, Federal Regulatory Affairs

cc: Ari Fitzgerald

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**Federal Communications Commission  
Office of Secretary**

**To Promote Wireless "Competitive Networks," the FCC Must  
Ensure That Wireless Carriers Have A Meaningful Opportunity  
to Qualify for Universal Service Funding**

*A presentation of the Personal Communications Industry Association  
May 1999*

- **Wireless carriers can compete with ILECs to provide universal service to consumers in high cost and rural areas – provided that the FCC acts to remove barriers to entry in the current system of federal universal service support.**
- **A critical step is for the FCC to clear the way for wireless carriers to receive Eligible Telecommunications Carrier ("ETC") this designation pursuant to Section 214(e) of the Act.** Although wireless carriers have obtained designation from a limited number of state commissions, they are encountering difficulties in many other states.
  - These states have already granted ETC status to certain CMRS carriers: Arkansas (Sprint PCS); California (Sprint PCS); Puerto Rico (Centennial Cellular); Washington (US Cellular); and Wisconsin (US Cellular).
  - To help move the process forward, the FCC should reaffirm its commitment to the principle that all carriers that are capable of providing supported services, regardless of technology, are eligible for ETC designation. Furthermore, the FCC should specifically list CMRS as a type of carrier that has such capability. *Universal Service First Report and Order ("Order")*, ¶¶ 145-47.
  - The FCC should seek comment on necessary clarifications and modifications to its existing rules to ensure that the ETC designation process is not a barrier to entry into the market for providing universal service.
- **Although the FCC specifically held that states cannot impose additional requirements beyond the statutory minimum, certain states are nonetheless considering doing so.** The FCC should reaffirm that the only criteria that states may consider are those listed in Section 214(e)(1) of the Act, i.e. that a carrier: (1) offers designated services, (2) throughout the service area, and (3) generally advertises their availability.
  - Some states are taking the position that only those carriers that already provide ubiquitous subsidized service should be deemed eligible. Unfortunately, this approach would preclude any new entrant (i.e. non-ILECs) from ever receiving support.
  - The FCC must clarify that the requirement that carriers "offer" designated services throughout a service area is met when the carrier does so within a reasonable period after receiving its ETC designation and before actually receiving support -- not that it must offer the services before it can receive its ETC designation. *See Order*, ¶ 137.
- **The FCC should clarify that wireless carriers are entitled to receive ETC status without relinquishing their Section 332(c)(3) exemption from state entry and rate regulation.** *See Order*, ¶¶ 145,147.
  - Contrary to certain states' positions, a CMRS carrier can receive ETC status even

if it is not certified as a LEC by the individual state commission.

- Contrary to arguments put forth by certain ILECs, CMRS carriers need not make any showing regarding the "affordability" of their rates.
- **The list of the services defined as eligible for support, 47 CFR § 54.101, must not be interpreted in a narrow way that could unnecessarily exclude wireless carriers from designation.**
  - Most broadband PCS and other CMRS carriers already provide the supported services: single-party voice grade access to the public switch network, with touch-tone type dialing and access to local usage, long distance, emergency services, operator services, and directory assistance.
  - To ensure competitive and technological neutrality, the FCC should clarify that the "access to local usage" requirement can be satisfied by any calling plan with local usage, regardless of the number of "free" minutes included and the definition of which calls are "local."
  - The FCC should reaffirm that CMRS carriers may satisfy the "access to emergency services" requirement pending developments of wireless E-911 technology.
  - The FCC should clarify that CMRS carriers may satisfy the "toll limitation for low-income customers" by offering pre-paid plans designed for low income customers.
- **The FCC must not allow the states to exercise their discretion in a way that would have an unfair effect on wireless providers seeking ETC status. This issue may arise in the context of state decisions: (1) defining the geographic service areas of carriers operating outside rural telco areas, or (2) considering "public interest" issues within rural telco areas.**
- **In cases where states lack jurisdiction over CMRS carriers or unreasonably refuse to designate a CMRS carrier as an ETC, the FCC should consider using its authority pursuant to Section 214(e)(6) to pre-empt and grant such designation.**
- **The FCC should proceed rapidly to remedy other universal service problems that disadvantage wireless and other new entrants. The Commission should:**
  - follow through on its commitment to "portability" by ensuring that CMRS carriers and other competitive ETCs receive the same amount of financial support as ILECs.
  - fix the "glitch" in its rules that effectively delays the timing of support to competitive entrants.
  - limit the overall size of the fund by targeting support to consumers in the highest-cost area, where support is truly needed.

### *Issues/Questions for the "Competitive Networks" Proceeding*

- *The FCC Should Provide Guidance on the ETC Process:* The FCC should give state commissions further guidance regarding the process for designating carriers as Eligible Telecommunications Carriers ("ETCs") under Section 214(e) of the Act, and the FCC can use its Section 201(b) rulemaking authority (as clarified by the Supreme Court in *AT&T v. Iowa Utilities Board*) to do so.
- *Wireless Carriers are Eligible for ETC Designation:* Specifically, the FCC should reaffirm its pre-existing decisions that: (1) wireless carriers have the right to be designated as ETCs if they satisfy the statutory conditions, (2) wireless carriers are entitled to ETC designation without relinquishing their Section 332(c)(3) exemption from state entry and rate regulation, and (3) states may not adopt additional requirements for ETC status beyond the criteria provided in Section 214(e). *Universal Service First Report and Order ("Order")*, ¶¶ 143-44, 145-47.
- *Extent of Service Required Before Designation:* In addition, the FCC should also clarify that states may not require carriers to provide universal service ubiquitously *before* receiving ETC designation -- indeed, imposing such a requirement would amount to a barrier to entry in violation of Section 253. The statute requires only that carriers must provide universal service throughout the specified service area *after* being designated as ETCs and once they begin receiving support. *Order* at ¶ 137.
- In this context, the FCC can also raise the following questions:
  - Should the FCC modify or clarify the *list of services* that ETCs must provide to eliminate impediments to technological neutrality? In particular, should the FCC allow CMRS carriers to satisfy the intent of the "toll limitation for low-income customers" requirement by offering pre-paid plans designed for low income customers? Should the FCC clarify its "access to emergency service" requirement in the context of CMRS carriers?
  - Should the FCC give the states further guidance on how to ensure a competitively neutral system in the context of (1) defining *the geographic service areas of carriers* operating outside rural telco areas, and (2) considering "*public interest*" issues within *rural telco areas*?
  - Should the FCC use its authority under *Section 214(e)(6)* to designate wireless carriers as ETCs? Under what circumstances should it do so? What is the extent of the FCC's authority under this provision?